

REMARKS

Claims 1-26 are rejected as anticipated or obvious. Claims 19-21 are rejected as indefinite. Claim 25 is cancelled. Claim 27 is added. Claims 1, 7, 19, and 26 are amended. Claims 1-24 and 26-27 are pending.

The claim amendments are made without prejudice to the Applicant filing one or more continuation or divisional applications with one or more of the original claims.

Support for the amendment to claim 1 is found at page 11, paragraph 68 (outer diameter of canula extension 132 can be about 15 mm) and page 14, paragraph 75 (inside diameter of internal lumen of cannula 233 can be at least about 12.75 mm.). Support for added Claim 27 is found in the specification and drawings as filed, such as but without limitation, in Figures 1, 2, and 24. Various claim amendments are also made to correct typographical errors. No new matter is added.

112 Rejection:

Claim 19 is amended to correct the lack of antecedent basis identified by the Examiner.

102 Rejections:

Claims 1-2, 4, 6-7, 10-12, 14, and 17 are rejected as anticipated by Dorsey III. Claim 25 is rejected as anticipated by Luther et al. Claim 26 is rejected as anticipated by Gerber et al.

Claim 1 is amended to recite the outer diameter of the first elongate member is greater than the internal diameter of the internal lumen of the second elongate member.

It is respectfully urged that Dorsey III, which teaches a telescopic probe, does not teach or suggest the subject matter of amended Claim 1. Accordingly, withdrawal of the rejection of Claims 1 and all claims depending from Claim 1 is requested.

Claim 26:

Claim 26 is rejected as anticipated by Gerber et al. (6,296,624). It is respectfully urged that this rejection is improper for at least the following reasons.

Claim 26 recites an assembly comprising a vacuum device for providing an operative space within a patient; and a multicomponent device for providing access from a point external of the vacuum device to a point within the patient; the multicomponent device comprising detachable first and second members, the first member for providing a first portion of an access passageway, and the second member for providing a second portion of an access passageway.

The Examiner states Gerber et al. discloses a vacuum device 40. It is respectfully urged that Gerber et al. describes the component numbered "40" as a "transmission means 40". See column 3, lines 48-50 of Gerber et al. It is respectfully urged that the component numbered 40 in Gerber et al. does not teach or suggest a vacuum device for providing an operative space within a patient. Withdrawal of the rejection is requested, or the Examiner is respectfully requested to provide an explanation for the rejection in a non-final rejection that provides the Applicant with a full and fair opportunity to respond.

The Examiner states that Gerber et al. teaches a first member 10 and a second member 20, and refers to Figure 15 of Gerber et al. Gerber describes a needle unit 10, a guide 20, and a disposal unit 21 (Column 4, lines 58-60). It is respectfully urged that Gerber et al. does not teach a multicomponent device as recited in Claim 26 for providing access to a point within the patient; the multicomponent device comprising detachable first and second members, the first member for providing a first portion of an access passageway, and the second member for providing a second portion of an access passageway. The Examiner is respectfully requested to provide a more specific explanation as to how the elements 10 and 20 of Gerber et al. anticipate the rejected claim.

If the Examiner's rejection depends on a portion of the Gerber et al reference related to a vacuum device, the Examiner is requested to specifically point out how Gerber teaches such a vacuum device for providing an operative space within a patient, and how the multicomponent device the Examiner believes Gerber teaches provides an access passageway from a point external of the vacuum device to a point within the patient.

103 Rejections:

Claims 3 and 13 are rejected as obvious over Dorsey III in view of Galt et al. Claim 5 is rejected as obvious over Dorsey in view of Santangelo. Claims 8-9 and 19-21 are rejected as obvious over Dorsey III in view of Olsen. Claims 15-16 and 22-24 are rejected as obvious over Dorsey in view of Sommerich. Claim 17 is rejected as obvious over Dorsey in view of Purdy et al. Claim 18 is rejected as obvious over Dorsey in view of Hildwein et al.

It is respectfully urged that these rejections should be withdrawn in view of the amendment to Claim 1, and the comments set forth above with respect to Dorsey III.

Additionally, it is respectfully urged that the Examiner's rejections under 35 USC 103 are not proper because the Examiner has not provided the motivation for making the reference combinations suggested by the Examiner.

For instance (but without limitation) regarding Claim 3 the Examiner agrees that Dorsey III fails to disclose a first member with closed distal tip, and regarding Claim 13 the Examiner agrees that Dorsey III fails to disclose a second member with a beveled tip. The Examiner then merely concludes that because Gault et al. teaches a medical device having a variety of tips, it would be obvious to modify Dorsey III to have those features.

It is respectfully urged that the Examiner's proposed approach would allow any combination of features in any two references to be combined to reject a claim as obvious. It is respectfully urged that this is not the appropriate standard or legal basis for obviousness, and that motivation for the combination must be found in the prior art.

Reconsideration and allowance of the claims, including new claim 27, is requested.

Respectfully submitted,

Gerry Gressel
Gerry Gressel, reg#34,342

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(513) 337-3535
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